

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

ROBERT ISADORE RICHARDSON,

Petitioner,

v.

**CIVIL ACTION NO.: 3:16-CV-38
CRIMINAL ACTION NO.: 3:05-CR-40
(GROH)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION¹

This matter is before the Court for consideration of a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of an R&R. On May 5, 2016, Magistrate Judge Trumble issued his R&R, which recommends that this Court deny and dismiss the Petitioner’s § 2255 petition as an unauthorized second or successive motion.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, this Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file objections in a timely manner constitutes a waiver of *de novo* review and a petitioner’s right to appeal this Court’s order.

¹ All citations to docket numbers in this Order reference entries in the above-styled criminal action.

28 U.S.C. § 636(b)(1)(C); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). In this case, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, objections to Magistrate Judge Trumble's R&R were due within fourteen days after being served with a copy of the R&R. The Petitioner was served with the R&R on May 9, 2016. To date, neither party has filed objections. Accordingly, the Court will review the R&R for clear error.

Upon careful review of the record, and finding no error, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 266] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. The Court **ORDERS** that the Petitioner's § 2255 petition [ECF No. 259] be **DISMISSED** as an unauthorized second or successive petition.

Subsequent to the entry of Magistrate Judge Trumble's R&R, the Petitioner filed a "corrected" § 2255 petition [ECF No. 269], which is currently pending before this Court. In this petition, the Petitioner sets forth the same claim, pursuant to Johnson v. United States, 135 S. Ct. 2551 (2015), as his original petition. Just as with his original petition, the Petitioner did not receive authorization from the United States Court of Appeals for the Fourth Circuit to file his corrected second or successive habeas claim. Therefore, based upon the identical reasoning contained in Magistrate Judge Trumble's R&R, the Court **ORDERS** that the Petitioner's corrected § 2255 petition [ECF No. 269] be **DISMISSED** as an unauthorized second or successive petition.

The Court **ORDERS** the above-styled civil case **STRICKEN** from its active docket.

The Clerk is **DIRECTED** to enter a separate judgment order in favor of the Respondent.

Upon an independent examination of the record, the Court finds that the Petitioner has failed to make “a substantial showing of the denial of a constitutional right,” and therefore **DENIES** a certificate of appealability. See 28 U.S.C. § 2253(c)(2).

The Clerk is **DIRECTED** to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* Petitioner by certified mail, return receipt requested.

DATED: November 18, 2016



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE